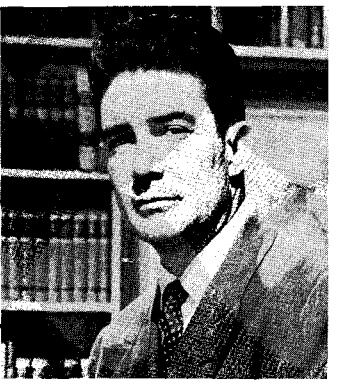
THE
Dan Smoot Report

Vol. 8, No. 53 (Broadcast 385) December 31, 1962 Dallas, Texas



DAN SMOOT

CONSTITUTIONAL AMENDMENTS

Bill of Rights

When the Constitution of the United States was submitted to the thirteen states for ratification, there was controversy over its acceptance.

Many patriots, who had been in the forefront of the Revolutionary War to separate the colonies from Great Britain, looked upon the Constitution as a document of tyranny: they thought it gave (or by omission permitted) too much power to the federal government.

With the history of the world spread out before them, as they considered the problem of founding a new government, these men warned against a central government which, under the pretense of helping the people, might use the substance of the people to enslave them.

It was Patrick Henry who probably brought the issue of ratifying the Constitution into sharpest focus when, in the debate over ratification, he demanded that further limitations on the powers of the central government be written into the Constitution before Virginia accepted it as supreme law.

The result of this conflict was a group of twelve amendments, proposed by the First Congress, in September, 1789. The states rejected two of the proposed amendments, but adopted the other ten; and all ten were ratified on December 15, 1791.

These first ten amendments, known as the Bill of Rights, are essentially a series of negative statements telling government what it cannot do; yet the Bill of Rights has had a profound impact on the history of the world.

In the first 130 years of America's existence, forty million Europeans gave up everything they had to come to this new land, seeking something that was promised here, and only here. In many other places, there were natural resources, and vacant lands, and

THE DAN SMOOT REPORT, a magazine published every week by The Dan Smoot Report, Inc., mailing address P. O. Box 9538, Lakewood Station, Dallas 14, Texas, Telephone TAylor 1-2303 (Office Address 6441 Gaston Avenue). Subscription rates: $10.00 a year, $6.00 for 6 months, $18.00 for two years. For first class mail $12.50 a year; by airmail (including APO and FPO) $14.50 a year. Reprints of specific issues: 1 copy for 25¢; 6 for $1.00; 50 for $5.50; 100 for $10.00 — each price for bulk mailing to one person. Add 2% sales tax on all orders originating in Texas for Texas delivery.

Copyright by Dan Smoot, 1962. Second class mail privilege authorized at Dallas, Texas.
No reproductions permitted.

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

climate — comparable to those of America; but, the great floodtide of immigrants beat on *American* shores.

They came *here,* because of the promise of America. It was not a promise of security or of the fat and easy life. It was the promise of freedom.

Why could America make such a promise to the peoples of the earth when no other land could? Primarily, because of the American Bill of Rights which guaranteed that government — even when benign and even when chosen by the people themselves — was restrained from violating the God-given rights of individual men.

The concept of limiting the power of government to the performance of constitutionally specified responsibilities is the most remarkable product of the remarkable American Revolutionary era. This concept is written into every article of the Constitution, and it is repeated with compounded emphasis in the Bill of Rights. This concept is the one thing which makes the old American constitutional system fundamentally different from any other governmental system ever created.

The United States is not the only nation governed by officials who are elected by the people, with secret ballots in free elections. We are not the only people with a Bill of Rights. Indeed, even the Constitution of the Soviet Union mentions more human rights than are mentioned, or even implied, in our Bill of Rights.

The unique thing about the old American constitutional system was the concept of constitutional government — of having a contract which government had to obey and could not stretch or violate even under the guise of doing something good for the whole people. Other Bills of Rights list the benefits and rights which government should provide for the people. Our Bill of Rights asks government for nothing, but tells government what it *cannot* do.

Congress shall make *no* law abridging the right of free speech; Congress shall make *no* law abridging religious freedom; Congress shall make *no* law abridging the right of peaceful assembly; Congress shall make *no* law abridging the right to bear arms.

Congress shall make *no* law to interfere with the sacred rights which we get directly from God.

That is the essence of our Bill of Rights. That is the essence of Americanism. That is the American philosophy of freedom which spread abroad and tugged at the hearts of men all over the earth.

Court Curbing Amendment—11th

Members of the Virginia ratifying Convention of 1788, who opposed the Constitution, were particularly concerned that the federal courts might usurp too much power. The illustrious George Mason, for example, warned that the Constitution would permit an individual to call a state government into federal court — thus destroying state sovereignty. James Madison, "Father of the Constitution," argued that the Constitution granted no such power.

But in 1793, the Supreme Court *(Chisholm v. Georgia)* accepted jurisdiction of a suit against a state, by a citizen of another state. This provoked such angry reactions in Georgia, and such anxieties in other states, that, at the first meeting of Congress after the decision, a resolution proposing the Eleventh Amendment was passed by an overwhelming vote. The amendment was ratified by the States with "vehement speed."

Reconstruction Amendment—14th

The Supreme Court's most controversial decisions (including the New York School Prayer Case and school segregation cases) are based on the Fourteenth Amendment — which was a product of the hate and bitterness of the Reconstruction Era, and which was never *con-*

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

stitutionally ratified. In a subsequent *Report,* we shall discuss this problem in detail. Suffice it here to say that the Fourteenth Amendment should be resubmitted to the states for *legal* ratification, or rejection.

"Democracy" Amendments — 16th and 17th

The original Constitution gives Congress power to tax the people directly, but, in three different places, requires that any direct tax be apportioned among the states according to population.

This severe limitation on the taxing power of Congress made a federal income tax impossible (as the Supreme Court actually ruled in 1895).

The 16th Amendment (adopted in 1913) removed the limitations, giving Congress unlimited taxing power — thus changing the essential nature of the American government.

One of the marvelous checks and balances in the original Constitution was the provision dividing the national Congress into two distinct Houses, each one answerable to a different electorate.

The Senate was intended to represent *state governments.* Hence, U.S. Senators were chosen by the state legislatures, not directly by the people; and all states, regardless of size, had equal representation. This preserved the idea and the actuality of a federation of sovereign states.

Members of the lower house, elected directly by the people, were answerable *not* to the governments in their home states, but to the voters in their districts.

The limited power of the central government was thus further limited by this division of legislative power between two Houses of Congress, each answerable to a different electorate — to a different set of interests. It makes little sense to have two Houses of Congress, both chosen by the same kind of electorate, as we now have.

The Seventeenth Amendment, providing for direct election of U. S. Senators, helped change the form and philosophy of the American government.

The 16th and 17th Amendments, adopted in 1913, converted the old American Republic into a democracy — which the Founding Fathers tried to protect us against, because they knew that any democracy will destroy liberty when the "have-nots" discover that they can raid the public treasury for handouts, by electing political scoundrels who promise "free" benefits from government.

Within five years after the "democracy" amendments were adopted, we were in a foreign war to make the world safe for democracy. We've been in depression, or war, or on the verge of war ever since.

We will not save freedom and restore the American Republic until we repeal the 16th and 17th Amendments.

The Texts

(The first ten amendments were all proposed by Congress on September 25, 1789, and were ratified on December 15, 1791.)

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 2

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT 3

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defence.

AMENDMENT 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT 11

(Proposed March 4, 1794; ratified February 7, 1795)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT 12

(Proposed December 9, 1803; ratified July 27, 1804; supplemented by Amendment 20)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT 13

(Proposed January 31, 1865; ratified December 6, 1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 14

(Proposed June 13, 1866)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT 15

(Proposed February 26, 1869; ratified February 17, 1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 16

(Proposed July 12, 1909; ratified February 3, 1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT 17

(Proposed May 13, 1912; ratified April 8, 1913)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT 18

(Proposed December 18, 1917; ratified January 16, 1919)

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT 19

(Proposed June 4, 1919; ratified August 18, 1920)

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 20

(Proposed March 2, 1932; ratified January 23, 1933)

Section 1. The terms of the President and Vice-President shall end at noon on the twentieth day of January, and the terms of Senators and Representatives at noon on the third day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall begin then.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Setcion 5. Sections 1 and 2 shall take effect on the fifteenth day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT 21

(Proposed February 20, 1933; ratified December 5, 1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT 22

(Proposed March 24, 1947; ratified February 27, 1951)

Section 1. No person shall be elected to the

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT 23

(Proposed June 21, 1960; ratified March 29, 1961)

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

For the Record

In September 3, 1962, issue of this *Report* ("Stabbed in The Back on The Fourth of July"), I criticized President Kennedy's Independence Day (1962) speech in which he said that the United States is now ready for a Declaration of Interdependence — ready to form a "concrete Atlantic Partnership" with European nations.

I pointed out that Harry A. Overstreet (whom I called a Harvard trained socialist) wrote a book in 1937, using for a title the same phrase that President Kennedy used 25 years later: *A Declaration of Interdependence.*

My point was that both Mr. Overstreet in 1937 and President Kennedy in 1962 were renouncing the ideal of American independence — in favor of an international economic and political yoking which would eliminate our national independence and make us interdependent on other nations.

Mr. Overstreet wrote me a letter saying:

"I am not and never have been a 'socialist' in the sense in which I think you use that word."

By *socialist,* I mean: *anyone who believes in permitting the central government to have whatever money and power officialdom says it needs in order to do things which officialdom claims to be good for the general welfare.* All of Mr. Overstreet's writing — which I have seen — reflects this socialist faith in political power.

I did err in calling Mr. Overstreet "Harvard trained." He studied at the University of California and at Oxford.

Mr. Overstreet denies that he — or President Kennedy — was renouncing national independence when advocating interdependence. His logic escapes me. *Independence* and *interdependence* have opposite meanings. One simply cannot recommend *interdependence* without renouncing *independence.*

In my comment about Mr. Overstreet's *A Declaration of Interdependence,* I said:

"In this book, Overstreet argues that there are only two existing political philosophies worthy of consideration: American Jeffersonianism and Soviet Marxism. Overstreet says that these two philosophies are actually very similar, and could be made identical by slight revisions."

In his letter to me, Mr. Overstreet said, "All of this is deliberate falsification of what I have written"; and he asked me to publish the following passage from pages 235-236 of his book:

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"Neither communism nor fascism can be other than tragic in the American scene. Each is a form of organization that eliminates something that is essential to our traditional wishes and ways of doing things. Each falls in more nearly with traditions in which a high degree of autocracy and regimentation have been pretty continuously in evidence. The American is an incurable individualist. He can realize the need for governmental control, but he must also have wide range for his ingenuity and initiative. Any form of social organization that proceeds to regiment him under an unlimited authority will be met by bitter and persistent opposition.

"America, in short, must, in its economic development, go the American way."

These two paragraphs from Mr. Overstreet's *A Declaration of Interdependence* do mean the opposite of what I claimed to be the argument of his book. Mr. Overstreet is, of course, quoting himself out of context, as he must do, unless he wants to quote his whole book. In giving my interpretation of his book, I was considering what I regarded as his over-all argument; but I, too, was making specific use of material out of context. This, indeed, is the only way one can evaluate Mr. Overstreet's book, because it contains many contradictions.

The specific material I had in mind, when giving my rather terse abbreviation of the general argument of Overstreet's book, was from Chapter 16 (Pages 267-278) in which Mr. Overstreet says:

"What would seem to be needed in America, then, is a certain combination of Marxian and Jeffersonian insight. Marx knew economic oppression when he saw it. He knew the ease with which possessors exploit non-possessors. He knew the subtle ways in which the possessing groups poison the fountain heads of education, ethics, religion, and statesmanship. He knew the need for a struggle against unjust oppression, and he had no hope that effective help in that struggle would come out of the possessing group.

"This is what Marx knew. Jefferson, however, had seen the energy with which individuals could turn a wilderness into cultivation, could organize against tyranny, could think out and execute a plan of life that aimed at general happiness. Jefferson had seen men enacting a kind of rough equality not through the interposition of heaven but through their own sturdy good sense.

"The modern American will doubtless have to be possessed of elements of both insights. The economic oppressions are vivid enough. The power of privilege is a scandal in the land. The average American needs now to become convinced that no cherished democracy can be achieved as long as these things are so. . . .

"There is enough in the tradition of American life to justify the Jeffersonian philosophy; there is enough in the present situation to justify a Marxian protest against gross economic injustice. The American, however, being an adept at picking up what seems to fit the situation, will probably end by accepting what seems relevant in both and proceeding to build a more acceptable order."

WHO IS DAN SMOOT?

Dan Smoot was born in Missouri. Reared in Texas, he attended SMU in Dallas, taking BA and MA degrees from that university in 1938 and 1940.

In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for the degree of Doctor of Philosophy in the field of American Civilization.

In 1942, he took leave of absence from Harvard in order to join the FBI. At the close of the war, he stayed in the FBI, rather than return to Harvard.

He worked as an FBI Agent in all parts of the nation, handling all kinds of assignments. But for three and a half years, he worked exclusively on communist investigations in the industrial midwest. For two years following that, he was on FBI headquarters staff in Washington, as an Administrative Assistant to J. Edgar Hoover.

After nine and a half years in the FBI, Smoot resigned to help start the Facts Forum movement in Dallas. As the radio and television commentator for Facts Forum, Smoot, for almost four years spoke to a national audience giving both sides of great controversial issues.

In July, 1955, he resigned and started his own independent program, in order to give only one side — the side that uses fundamental American principles as a yardstick for measuring all important issues.

If you believe that Dan Smoot is providing effective tools for those who want to think and talk and write on the side of freedom, you can help immensely by subscribing, and encouraging others to subscribe, to *The Dan Smoot Report.*

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED